

GEOSEARCH, INC.

IBLA 79-106

Decided April 18, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, dismissing protest against the issuance of oil and gas lease U 41071.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest--Words and Phrases

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

2. Oil and Gas Leases: Applications: Drawings

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of impropriety in a relationship between a leasing service and its client and is unsupported by facts showing that the successful drawee should have been disqualified, as the protestant has failed to meet his burden of showing with

competent evidence that there has been a violation of applicable regulations which would disqualify the offer.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; William R. Hamm, Esq., Milwaukee, Wisconsin, for protestee and for Resource Services Company, Inc.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneous noncompetitive oil and gas lease offer drawing entry card of James D. Brinckman et al. <sup>1/</sup> (offerors), was drawn with first priority in the August 1978 drawing for parcel UT-70 by the Utah State Office, Bureau of Land Management (BLM). On September 28, 1978, Geosearch, Inc. (Geosearch), filed a protest against the issuance of this lease to the offerors, alleging that the Resource Services Company, Inc. (RSC), had an interest in their offer and that 43 CFR 3102.7 and 3112.5-2 had been violated. On September 28, 1978, BLM notified the offerors that it required them to submit a copy of their agreement, if any, with RSC concerning the filing of this offer.

On October 10, 1978, the offerors filed this copy of their agreement with RSC, which provides in part as follows:

#### SALES AGENCY AVAILABLE

When I win a drawing, R.S.C. provides at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

#### OUTRIGHT SALE OF OIL & GAS RIGHTS

\$1 to \$100,000.00 ----- Service fee to R.S.C. 16%  
Over \$100,000.00 ----- Service fee to R.S.C. 12%

#### IN EVENT OF ROYALTY PAYMENTS

\$1 to \$100,000.00 Annually --- Service fee to R.S.C. 16%  
Over \$100,000.00 Annually --- Service fee to R.S.C. 12%

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<sup>1/</sup> The other offerors, the existence of whom was duly noted on the offer card, are James C. Mitchell, Darrell Wertz, and Thomas D. Hintz.

If I do not receive at least \$10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge. [Emphasis supplied.]

This memorandum bears the offerors' signatures and the notation that they authorized it on April 14, 1978, prior to the submission of their offer card by RSC. A marginal note on the memorandum indicates that it replaces the agreement currently in effect.

On November 2, 1978, BLM issued a decision dismissing Geosearch's protest, holding that the agreement did not disclose that RSC had an interest in this offer, as it was at the offerors' option and therefore was not an enforceable agreement under which offerors were obligated to transfer an interest to RSC. Geosearch (appellant) filed a timely notice of appeal from this decision.

[1] The agreement in question here is identical to that considered by this Board in Geosearch, Inc., 39 IBLA 49 (1979). We adhere to and reconfirm our holding there, to wit:

The agreement between [the offeror] and RSC which was in effect at the time the offer was filed here created no "interest" in RSC which [the offeror] was required to disclose under 43 CFR 3102.7, or which might have resulted in RSC's having filed multiple offers for parcel WY 52 in violation of 43 CFR 3112.5-2. Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client strictly at the client's option in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. 43 CFR 3100.0-5(b); Virginia L. Jones, 34 IBLA 188, 193 (1978); Harry L. Matthews, 29 IBLA 240, 242 (1977); R. M. Barton, 4 IBLA 229, 232 (1972); John V. Steffens, 74 I.D. 46, 53 (1967). Thus, in such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer and the filing of offers for the same parcel by other clients of the service is not disqualifying. 43 CFR 3102.7, 3112.5-2; Virginia L. Jones, *supra*; Harry L. Matthews, *supra*; R. M. Barton, *supra*; John V. Steffens, *supra*.

Here, the agreement between RSC and [the offeror] gave [him] the option, after he won the lease, of having RSC arrange a sale for him in return for a specific percentage

of the proceeds of the sale. As it happened, he accepted an offer presented to him by RSC. However, as the language of the agreement expressly contemplates his declining to exercise this option, he could have declined to accept this or any other offer arranged by RSC without violating the terms of the agreement, and by so doing, have prevented RSC from gaining any financial benefit from the lease. [Footnote omitted.]

Thus, at the time the lease offer was filed, RSC had merely a hope or expectancy that [the offeror] would choose to accept an offer arranged by it, and that it would share in the proceeds of the lease through commission. This does not constitute an "interest." Therefore, the lease was properly issued to [the offeror] as there was no violation of 43 CFR 3102.7 or 3112.5-2.

Appellant places great stock in the fact that RSC clients "invariably exercise their option to have RSC as their agent, and RSC comes out with the same share of the proceeds in the Lease as in the older, invalid agreements." <sup>2/</sup> We note that appellant has not shown that RSC clients "invariably" exercise the option to have RSC negotiate the sale of their leases. In any event, it is immaterial to the sole question at issue here if its clients do exercise this option. As discussed in *Geosearch, Inc.*, supra, quoted above, it is the optional nature of the arrangement which distinguishes it from other agreements which do create "interests" under the regulations. The fact that RSC's clients have the absolute right to refuse RSC's agency and instead to negotiate the sale of their leases themselves distinguishes this agreement from other objectionable interest-creating agreements, as RSC, at the time the offer is filed, has a mere hope or expectancy of a share of the proceeds, which is not an "interest." As RSC has no "interest" in the offer, 43 CFR 3102.7 and 3112.5-2 are violated.

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<sup>2/</sup> The agreements to which appellant refers were essentially identical to the present agreement except that they did not give the offeror the option to negotiate a sale himself without incurring liability to RSC for a portion of the proceeds of the sale. Because RSC had an absolute, enforceable right under these agreements to receive a portion of the proceeds of any sale of the lease, it had an "interest" in the offers of those clients who entered into these agreements. *Alfred L. Easterday*, 34 IBLA 195 (1978); *Sidney H. Schreter*, 32 IBLA 148 (1977); *Lola I. Doe*, 31 IBLA 394 (1977).

[2] Nor do we agree with appellant that the fact that RSC's clients exercise their options "compels the conclusion that there is something more to the agency agreement between RSC and its clients than is set forth in the Service Agreement." If appellant is suggesting that RSC is somehow preventing its clients from exercising their options, it is incumbent on it to present some proof so demonstrating. Geosearch, Inc., *supra* at 54 and cases cited. Appellant has presented no competent evidence of irregularities which effectively changed the nature of the agreement between RSC and the offerors in such a way that the optional nature of the agreement was negated so that RSC really had an interest in the offer at the time it was filed, and has not shown that the regulations have otherwise been violated. Accordingly, we conclude that its protest was properly dismissed. Nor, in the absence of any competent evidence of impropriety, will we refer the matter for a hearing before an administrative law judge, as appellant has requested.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

